

Case 3:20-cv-03414-FLW-LHG Document 15-5 Filed 07/08/20 Page 2 of 52 PageID: 358 1 IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS 2 HOUSTON DIVISION 3 4 JAMES PHILLIPS, and ROBERT SAEMIAN, 5 Plaintiffs,) CIVIL ACTION NO. VS.) 4:18-CV-821 6 7 WIPRO, LIMITED,) 10:20 A.M. Defendant. 8 9 DISCOVERY HEARING BEFORE THE HONORABLE ALFRED H. BENNETT 10 AUGUST 16, 2019 11 APPEARANCES: 12 FOR PLAINTIFFS: MR. DWAINE M. MASSEY 13 Massey Law Firm PLLC 601 Sawyer Street, Suite 225 14 Houston, Texas 77007 15 (713)223-1550 16 MR. MICHAEL JOHN VON KLEMPERER Kotchen & Low LLP 17 1745 Kalorama Road NW, Suite 101 Washington, DC 20009 (202) 471-1995 18 FOR DEFENDANT: 19 MS. GRETCHEN AGENA 2.0 MR. JAMES BRADLEY SPALDING MR. KERRY E. NOTESTINE 21 MR. KEVIN STEPHEN LITTLE Littler Mendelson PC 22 1301 McKinney, Suite 1900 Houston, Texas 77010 (713)951-940023 2.4 Proceedings recorded by mechanical stenography, transcript

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produced by computer.

Case <u>3:20-cv-03414-FLW-LHG</u> Document 15-5 Filed 07/08/20 Page 3 of 52 PageID: 3\$9 APPEARANCES CONTINUED: COURT REPORTER: Heather Alcaraz, CSR, FCRR, RMR Official Court Reporter 515 Rusk, Suite 8004 Houston, Texas 77002 (713)250-5584

THE COURT: On Cause No. 4:18-CV-821, Counsel, your 1 2 appearances for the record. First, from the plaintiff. MR. MASSEY: Your Honor, Dwaine Massey and 10:20:17 3 Mike von Klemperer for the plaintiffs. 4 MS. AGENA: And, Your Honor, Gretchen Agena, Kerry 10:20:27 Notestine, Brad Spalding --6 THE COURT: Hold on. Mr. Spalding -- was there a 10:20:32 7 third name you said. 8 MS. AGENA: Notestine, Mr. Notestine. 10:20:40 9 MR. NOTESTINE: I'm the attorney in charge, 10:20:4210 Your Honor. 11 THE COURT: Okay. Mr. Notestine, yes. 10:20:4312 10:20:4413 MS. AGENA: And Kevin Little. 10:20:5014 THE COURT: Very well. 10:20:5015 Counsel, there are multiple motions that I hope to get 16 to the bottom of today regarding -- I see the motion for phased 17 discovery, which was Document No. 56. There was a motion to 18 seal matter in support of their motion to compel, Document 73. I am sure there are a few others, and so -- others that need 19 2.0 ruling you will bring to my attention. 10:21:4221 So, Mr. Massey, you're going to be speaking to me, or 22 your co-counsel? 10:21:4523 MR. MASSEY: I'll be speaking to you, Your Honor. May I approach the podium? 24 THE COURT: You may. 10:21:4725

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MR. MASSEY: Thank you.

Your Honor, I think it's important to -- to keep in mind the procedural posture of why we're here. I understand that there are other motions pending, but we're here to follow up on your April 12th, 2019, ruling in this case, and that ruling was very clear, very -- very unambiguous as to what the parties were supposed to do, specifically what the defendants were supposed to do by way of production of documents in this case.

And so, really, there are four things. First, the procedural posture of this case, it's -- we're not here on a motion to compel. The Court's already ruled that certain documents should be produced. The Court was very specific in that ruling.

So -- so -- the Court was specific as to the time period for which documents were to be produced. The Court was specific as to what types of documents were to be produced. The Court was specific as to the location, the nerve center -- the East Brunswick, New Jersey, nerve center, Wipro, from which the documents should be primarily produced, although the Court was clear in its ruling that the documents to be produced were documents to be -- that could be accessible from that and given today's technology.

Then the Court, again, was clear. No party has raised an objection or sought clarification of anything from that

April 12th hearing. The parties have been allowed to review the 1 2 transcript from that hearing, and -- and at the end of the day, Judge, I like -- I think it's important for us to look at -- to 3 see what the Court's ruling was, and there really hasn't been 4 any dispute about -- about what that's been. 5 So, Your Honor, may I pass these things out so the 10:23:34 7 Court will have something to look at? THE COURT: You may. 10:23:39 8 10:23:40 9 MR. MASSEY: And the parties as well. Can I get some assistance, Michael? I think we'll 10:23:4110 have five for the Court and... 11 (Document handed to the Court.) 10:24:1112 10:24:1313 MR. MASSEY: So, Your Honor, you can see that -- and 14 we've gone through the transcript, as has defense counsel. 15 time period involved, the time frame was June 1st, 2014, 16 forward. The geographic location was East Brunswick, 17 New Jersey, and the three plaintiff locations. 10:24:2818 And you can see that the Court was very clear that it was not interested in the parties playing word games about what 19 was to be produced because, as the Court was very clear on 20 April 12th, it would not take kindly upon a party suggesting 21 that the plaintiff did not meet their certification burden if it 22 hadn't been given the opportunity to conduct the discovery 23 necessary to make their case. 24 And so you'll see -- on this page, you'll also see 10:24:5325

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that the categories of documents and data that were to be produced, and there are four big categories — four big buckets, Your Honor. Data regarding applications, staffing, visas, promotions and terminations; number two, affirmative action plans, analyses, data, communications with people fluent. The Court will recall there was the issue of the subpoena of the people fluent that the Court thought that we could pull back on because we were under the impression that Wipro would make the requisite production.

We also asked for business plans, policies, practices, and other documents related to hiring, staffing, promotions, terminations and visas, and complaints of discrimination.

So, Your Honor, that's the lay of the land. That's what we were -- that's the guidance that the Court gave us on April 12th. And so, you know, we've had several meet-and-confers, and I don't think it's -- I'm not going to take up the Court's time to go through that chronology, but, you know, two weeks after -- just two instances.

Two weeks after, on April 29th, we visited. We had a meet-and-confer with defense counsel, and we were told that they were formulating their position, which was of somewhat concern.

Later on in May, we were told that they would fully comply, and that eased our concerns, and we were hopeful that they would comply. So we went -- awaited production, and we were disappointed by the results of their production. And,

Your Honor, there are various levels of disappointment that we have, and I think it's important for the Court to see what those are.

So what we've done, there's an appendix in our

July 22nd, 2019, letter, but we've also looked at the

information, the deficiencies in the production from another

aspect as well. So that level — that letter's available to the

Court. That appendix is available to the Court. We've also

summarized it in this document that I would like to pass out to

the Court as well.

(Document handed to the Court.)

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MR. MASSEY: So, Your Honor, what we've tried to do is identify not only what -- what -- the kinds of documents that were omitted from the production, but how that hurts us because I think that's -- that's really the crux of the issue: How does the lack of production of certain documents ordered to be produced by the Court hurt us in our ability to make the certification case and carry our burden?

So we've gone down, Your Honor, the list of the documents and electronic information ordered to be produced, and we've provided notes, comments as to the deficiencies that we observed in going through that production. And to the far right, you can see how we're hurt by that, how the lack of production, the lack of compliance, how the deficiencies impede and impair our ability to make the certification case and carry

1 our burden.

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So, for example, if you look at the staffing data -and so with respect to the staffing data, only five snapshots of
employee data listing employees' locations, job titles and job
levels on a single day for each year was produced, and that
precludes us from being able to determine which employees were
benched and then terminated, and the race and national origin of
those employees. That's the kind of data -- kind of data sets
that we need in order to make the -- the pattern and practice
case before us, Your Honor.

Another example is that affirmative action analyses near the bottom. No company-wide affirmative action plans were produced, only site-specific plans, Judge, that, you know -- and the few nationwide data sets we looked at only included 300 of Wipro's approximately 14,000 employees. So, you know, it appears that Wipro has withheld plans to prevent us from having a complete set of these affirmative action plans, and this is data that -- that Wipro is required to maintain and provide.

And, finally, Your Honor, the business plan on the next page. You know, no business plans were produced with exception of 11 globalization PowerPoints that -- that -- that only concern staffing, not promotions, not terminations. And so, I mean, those business plans are probably more likely to aid the defense than the plaintiffs in this case.

So we're looking at -- again, the Court considered a

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motion to compel. The Court made a ruling. The ruling was clear. No party has said, "We don't understand what the judge is saying or what the judge is ordering." Wipro, you know, in May, after the April 12th hearing, said they'd fully comply. We get the production, and we see that they haven't fully complied.

Now, you know, that's -- that's a problem. So -- but,

Now, you know, that's -- that's a problem. So -- but, Your Honor, we have a solution, and what we want to do is to be able to test that compliance. And I know Wipro is going to tell the Court -- they've stated it in writing. They'll say it today -- they produced 100- -- 130,000 pages of documents.

Well, that's a great number, but I submit to the Court that that's irrelevant if the documents produced were deficient, if there were gaps in those production, and if the documents were so heavily redacted that we — it contained no useful or very limited use information. So what we've proposed, Your Honor, is to take a 30(b)(6) deposition where we test Wipro's compliance.

And I know Wipro is opposed to that. They've objected to it, but, Your Honor, when the Court made a ruling on April 12th, the ruling was clear, and Wipro finally said they'd fully comply. The only issue is whether the documents exist or not. At no point have I seen any document from Wipro saying, "We fully complied with -- with Judge Bennett's April 12th, 2019, order."

What Wipro is saying is, Your Honor, let's revisit

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this phased discovery issue again. Let's -- let's take this one step at a time. Let the defendants do all of their discovery, and then file any motion they want, and then the defendants -- and then the plaintiffs can have their turn.

Judge, you hit the nail on the head in the April 6th hearing when you said to Mr. Spalding, "But it sounds like you're in favor of defendants conducting discovery as to the plaintiffs' claims on the plaintiffs' side, but that you're not prepared to produce and/or have your witnesses deposed. Am I mishearing you?"

Mr. Spalding's response was, "No. You're not
mishearing me."

So, Your Honor, what we want is the ability to -- to get what you ordered be produced, to get it, to review it, and to make our case to carry the burden that's before us. The -- the objection to the 30(b)(6) deposition is one that falls on deaf ears. I mean, what the defendants have argued is that, well, that's discovery about discovery. Well, that's not what the case law says, and as this Court knows, what's good for the goose is good for the gander.

And the deposition of Mr. Phillips was taken, and some of the same questions about what he did to conduct discovery show that the concerns about the quality of the production are valid concerns. I mean, some of the questions Mr. Phillips was asked: (Reading) So this is a request for production of

1 documents. Wipro's counsel asked for certain documents, and 2 then your lawyer made some responses, and I'm going to ask you a few questions about this. 3 This is in the Phillips deposition transcript. 10:33:41 So we're not conducting -- seeking to conduct 10:33:45 5 discovery about discovery. We're seeking to conduct discovery 6 7 about compliance with this Court's discovery order so we can see the lay of the land, we can get the documents we need, we can 8 fill in the deficiencies we've observed, and we can make the 9 case we have to make. 10 THE COURT: Thank you, Counselor. 10:34:0411 10:34:0912 MS. AGENA: Good morning, Your Honor. THE COURT: Good morning. 10:34:1013 10:34:1214 MS. AGENA: So I, obviously, want to start off by addressing plaintiffs' argument that we have not complied with 15 the Court's order of April 12th, 2019. Nothing could be further 16 17 from the truth. What we did, in response to that instructions, we did limit the time frame from June 1, 2014, forward, and --18 which was pursuant to the Court's instructions at the hearing, 19 and then we did a monumental search for and processed, reviewed, 20 produced all of those documents on June 11th, as ordered by the 21 Court. 22 We produced in excess of 130,000 pages of documents 10:34:5623

responsive to each and every one of the requests that were

brought up by plaintiffs at the April 12th hearing.

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includes -- and we specifically went so far as to -- with respect to the Court's comments at the hearing, we viewed those instructions as broadly as possible.

So, initially, the Court limited the production to four locations in the U.S.: Houston, where Plaintiff Saemian was located, a location in Minneap- -- Minnesota and Oregon where Plaintiff Phillips applied for positions, and those are the only two named plaintiffs in this case.

The Court further instructed the production of documents from East Brunswick, New Jersey, which is the U.S. headquarters for Wipro. After Mr. Kotchen continued to argue that point, ultimately, the Court said he wanted us to produce documents that were accessible from the New Jersey headquarters.

And so because of that, we did. We took that to mean not only documents physically located in New Jersey, but also documents that could be requested from someone with authority in New Jersey, including documents that came from spreadsheets that were extracted from databases at Wipro's international headquarters in Bangalore, India. That is why there are so many documents that were produced.

We produced all of the affirmative action reports for the U.S. for this time frame even though, during this time,
Wipro wasn't even a government contractor that was required to produce such affirmative action reports. And I'd like to just briefly go through their index.

They make the comment that -- with respect to staffing data, that we only produced it as of five dates. What we did with that staffing data -- each one of those spreadsheets, if you were to print them out, would amount to thousands of pages because they contain all of the information about the employees who were employed as of those dates.

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Now, they're claiming, Well, that doesn't give us enough information. What they're neglecting to mention is that we also produced a complete hiring — a spreadsheet with complete hiring information for all of Wipro's employees in the U.S. during that — the relevant time frame; another spreadsheet — complete promotions data for all Wipro employees during that time frame; another spreadsheet for complete terminations data for all Wipro U.S. employees during the time frame; a visa database for all Wipro employees during that time frame; the status of the visas.

Each of those spreadsheets, if you were to print them out, would be thousands of pages of entries, and all of that was produced to them in native format. So they absolutely have the information they need to pursue their claims in this case on a class-wide basis.

The second thing that they argue is that we omitted race -- race information. We did not. All of the information that was produced in these databases, which are easily searchable, you know, completely for them to be able to sort and

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review and search, that information is coming from Wipro's SAP database, and what it contains is -- as I'm sure the Court is aware, and certainly plaintiffs' counsel should be aware, that that is pursuant to voluntary EEO self-identification surveys.

So if an employee or applicant provided that information, it was put into the database, but, of course, we cannot force employees to provide that information. And, therefore, if they didn't, then that's not in the database, and, of course, Your Honor knows that we can't produce information that we don't have.

The other point I'd like to make is even if we did have that data for every employee, which we don't because, again, it's a voluntary self-identification survey, it still wouldn't go to their claim because they're claiming we discriminated against individuals who weren't of South Asian origin or race or ethnicity.

Well, there's no category in the EEO-1 for

South Asian. There's a category for Asian. But even if we had

all of that information, which we do not because, again, it's

voluntary, that wouldn't take care of the issue of -- you know,

that they have information about who's South Asian or not

because it's not a category.

The other thing I want to point out is that, you know, essentially, if we look at each one of these categories, all of these documents have been produced. Not only did we produce

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those documents, but we also included that in our supplemental responses. We specifically told them the Bates name -- range numbers of which documents are responsive to which request.

And now, all of a sudden -- and the first time they ever mentioned any problem with our discovery was on July 16th when we got the short little e-mail after Mr. Spalding had already attempted to confer about the 30(b)(6) notice that was served on July 1st. So we made multiple attempts, Your Honor, and they're outlined in my letter to the Court, to try and resolve these issues with opposing counsel.

The response that we got each time we tried to have an in-person or telephone conference was this: When Mr. Spalding first asked Mr. Kotchen, in person, the basis for the 30(b)(6) notice, his response was simply, Well, I'm entitled to that discovery, and refused to have any further discussion about it. We got an e-mail two days later, basically said the same thing. This is all in the attachments to our letter.

THE COURT: Wait. Before I go down that rabbit hole as to the back-and-forth, which doesn't move the issue for me --

MS. AGENA: Uh-huh.

THE COURT: -- let me make sure I understand your representations to the Court based upon the argument that counsel provided. Is your representation to me that from my April the 12th order, that you -- by "you" I mean the defense -- has fully complied with my order? Is that correct?

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MS. AGENA: We believe we have fully complied with the
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             order.
                     I will make a couple of notes that one issue is we're
             hitting a moving target with respect to ongoing events.
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                       So for the spreadsheets, we limited that to the period
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             from June 1 -- I'm sorry, June 1 of 2014 through May of 2018.
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             Because, obviously, Wipro is an ongoing business --
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                       THE COURT: I get that. Okay.
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                       But assuming that you had to put in a range --
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                       MS. AGENA: Uh-huh.
                       THE COURT: -- of dates to request information, and
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             you're telling me now that you did that through the end of May
             of '18 --
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                       MS. AGENA: Correct.
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                       THE COURT: -- assuming that date to be your end date
             for your run request, you fully complied?
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                       MS. AGENA: Yes. And -- and the only other thing I
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             would add, though, is with respect to EEOC charges, we've
             recently become aware of a couple more that have been filed.
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             One that we just received -- that the client just received a
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       20
             couple weeks ago.
                       So we will be supplementing our production as to a few
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             additional EEOC charges.
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                       THE COURT: So with those two caveats, you're in full
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             compliance?
                       MS. AGENA: Yes, Your Honor.
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THE COURT: Which moves me -- well... 10:43:21 1 MR. SPALDING: Your Honor, may I chime in --10:43:27 2 THE COURT: No. Just a moment. 10:43:34 I'm not sure who -- I don't -- you know, from memory, 10:43:40 who has appeared before me either here, or when I was on the 5 other side of town on the state court bench. But one of the 6 7 things that I've always stressed -- and I mean it -- is when counsel stands up, looks me in the eye and makes a 8 representation to me as an officer of the Court, I take them at 9 10 their word until they give me a reason not to. So that's why I 11 asked the question. 10:44:1512 And I assume that you understand that when I asked you whether or not you have fully complied, with the exception of 13 14 the two caveats about the run date and the additional 15 complaint -- EEOC complaints that you've received, that you have fully complied with my order. 16 10:44:3517 So did I understand you correctly? MS. AGENA: Yes, Your Honor. 10:44:3718 10:44:3819 THE COURT: All right. With that being said, counsel mentioned a deposition to test that representation, and he 20 indicated that he was getting pushback from the defense on that. 21 And I would assume, based upon what Mr. Massey represented, he 22 was simply requesting a deposition to have someone from the 23 defendant, under oath, answer questions along the lines of, This 24

was ordered to be produced. In regards to this particular

1 request, what was done to meet it?

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What -- you know, I assume that would be the search -- and have all documents, in regards to that run request, been produced? And so I would assume that the answers would be, We conducted a search consisting of one, two, three. It produced documents X, Y and Z, and all documents, X, Y and Z, have been produced.

MS. AGENA: Those are not their requests. And if I may approach, I have the list.

(Document handed to the Court.)

MS. AGENA: One other caveat I should make,
Your Honor: We obviously didn't produce any privileged
information, but we produced a privilege log.

THE COURT: Understood.

Well, one of the things that counsel took pains to point out to me was, I guess -- and I hadn't seen it, but I'm just going off his representations to me -- that in Mr. Phillips' deposition, questions were posed to him regarding the completeness of his discovery responses, and that what he intended to do -- plaintiff intended to do was to do likewise with the defense response. So --

MS. AGENA: And I think if Your Honor looks at the actual topics, which are listed at one, two, three -- four on here, you will see that that -- their topics go far and away beyond that. For example, topic one says: (Reading) Identify

MS. AGENA: So our position on this is that, you know,

to have to provide somebody to identify and describe everything

1 and describe, by content, location and purpose, all Wipro 2 databases, Internet systems, servers, custodians and documentary -- document repositories accessible from Wipro's 3 New Brunswick -- which was -- I'm sorry, should be 4 East Brunswick, New Jersey, location. 5 That is not limited, Your Honor, as to anything that's 10:47:24 7 relevant to our document production. As you can see, it's -it's so overbroad. There's no restriction as to time, and 8 there's no restriction as to subject matter. 9 So really what they're asking for, to identify and 10:47:4010 describe every single scrap of paper, every single computer, 11 12 every single server -- and, Your Honor, there was one other document I'd like to provide, which is our supplemental answers 13 14 and objections to plaintiffs' first set of interrogatories. (Document handed to the Court.) 10:48:2615 10:48:2716 MS. AGENA: And, Your Honor, these were actually 17 served on March 15th of 2019. So it was even before the 18 April 12th hearing. 10:48:3319 But in this, they ask for identification of all the servers and databases and so on and so forth, and if you skip 20 through a couple of pages, you will see a very detailed list of 21 servers and databases. 22 THE COURT: All right. So --10:48:5623

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Simply limited on those means as to what the Court

1 in -- that's even accessible from the U.S. headquarters is so 2 overbroad --THE COURT: Well, first things first. I get that 10:49:19 3 point, but I'm trying to nail down another point. 4 MS. AGENA: Right. 10:49:24 THE COURT: And that is simply in regards to -- well, 10:49:24 7 let me ask in a more direct way. Is the defense opposed to a 30(b)(6) deposition whose topics would be limited to how the 8 defendant complied, i.e., responded to the Court's April the 9 12th order? 10 MS. AGENA: I think it would be rather difficult for 10:49:5911 12 us to produce a witness without invading the attorney-client 13 work product privileges. 10:50:0814 THE COURT: Well, that's an issue that happens in all 15 depositions to where counsel's sitting there, and they're 16 instructed not to answer because of attorney-client privilege or 17 attorney work product. What I'm getting at is -- I think President Reagan said it best, "trust but verify." 18 10:50:3019 And so to the extent that your representation needs to be tested under oath by a representative of the defendant: 20 was the request that we received from counsel. We went out. 21 22 conducted a search, and those documents have been turned over and produced, and I can affirm under oath that that has 23 24 happened.

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ordered on April the 12th, if it is limited to that and that 1 only, what is the opposition from the defense? 2 MS. AGENA: Because -- again, on the privilege issue, 10:51:13 3 as counsel for Wipro, we're the ones who had those 4 communications with in-house counsel for Wipro as to the efforts 5 that were taken. I mean, I can represent to the Court what was 6 done. 7 THE COURT: And I -- and I understand that, and I 10:51:31 8 appreciate that, and I think we've had that conversation --9 MS. AGENA: And one other point --10:51:3810 10:51:3811 THE COURT: -- how does -- but my -- my point is: 12 does counsel, who may not be as trusting as me -- how does counsel confirm for not only his own peace of mind, but his 13 clients' peace of mind that all documents requested and ordered 14 15 to be produced from my April the 12th order have been produced? 16 What would you suggest? 10:52:0517 MS. AGENA: Well, I mean, obviously, again, we're officers of the Court, Your Honor. And I want to make one 18 point, which is the -- they've cited to a couple of cases. Each 19 one of those cases were decided -- that they cited were decided 20 before the rule change in 20- -- in 2015 to Rule 26, and that 21 introduced, obviously, the balancing test. 22 We've cited to several cases from within the 10:52:3123 Fifth Circuit -- none of their cases are -- but they're from 24 2018 that specifically note that discovery about discovery is 25

deposition of an individual because, obviously, that has to be a

corporate rep. And given the volume of production -- I mean,

plaintiff produced fewer than, I believe, 5,000 pages. We have

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They did not come back to us with any alleged

1 already produced -- I mean, when I said 130, that's just our 2 supplemental production, and we've supplemented since then, and there was prior production of, you know, another 10,000 3 documents. 4 So when you're balancing those two interests, you're 10:54:20 5 obviously dealing with a much different issue to have somebody 6 testify as to every single one of those on the Wipro side. 7 The other thing I would suggest, Your Honor, is we 10:54:34 8 can -- you know, I mean, they've already served the 9 interrogatory as to our databases, right? We can certainly 10 provide verification -- verified interrogatory responses as to 11 12 any other issues. 10:54:5113 THE COURT: All right. Anything else, Counsel? 10:54:5214 Hold on just a moment. 10:54:5415 Anything else, Counselor? 10:54:5816 MS. AGENA: One second. 10:54:5917 (Sotto voce discussion between Ms. Agena and unidentified 10:55:0218 individual.) 10:55:1319 MS. AGENA: And, yes, Your Honor, so just one other thing that I did want to mention. Again, we produced all of 20 these documents pursuant to the Court's instructions on 21 June 11th. We got the 30(b)(6) notice on July 1st. I highly 22 doubt that there was a complete and thorough review of all of 23 24 our production.

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1 deficiencies until after we had repeatedly asked them to confer 2 on the 30(b)(6) issue. They're not even trying to confer with us on any alleged deficiencies. That should be the starting 3 point. 4 And so if that is the issue, you know, we should be 10:55:54 5 able to meet and confer on, you know, resolving any alleged 6 7 deficiencies before we get to the step of a grossly overburdensome 30(b)(6) deposition notice that, quite frankly --8 I think it would be impossible to have certainly just one 9 witness testify as to everything that's out there that's not 10 each related to the lawsuit. 11 THE COURT: Anything else, Counsel? 10:56:2812 MS. AGENA: At this point, unless we want to take up 10:56:3013 the scheduling order, I think that covers the 30(b)(6) issue. 14 10:56:3815 THE COURT: Thank you, Counsel. 10:56:3916 Counsel, did you have to weigh in on something --10:56:4217 MR. SPALDING: Well, I don't think so. I think she covered it just fine, Your Honor. 18 THE COURT: Thank you. 10:56:4619 MR. MASSEY: May I respond, Your Honor? 10:56:5220 THE COURT: Two things, Mr. Massey. First and 10:57:0721 foremost, I have counsel standing in front of me in a federal 22 district court telling me that she has fully complied with my 23 April the 12th order. She gave me two caveats about an end date 24 and some supplementation regarding some additional complaints, 25

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1 but other than that, the representation was that she's fully 2 complied. I think counsel knows the weight of that 10:57:38 3 representation and what that means if it turns out it's not 4 correct. That's point 1. The last point that counsel made --5 and I -- I apologize for the dates again. Your date of 6 7 compliance of producing the documents you said was June what? 10:58:03 8 MS. AGENA: June 11th. THE COURT: June 11th. 10:58:04 9 MS. AGENA: The 60 days after the April 12th hearing. 10:58:0710 10:58:1011 THE COURT: So -- and then she stated that the 12 deposition request came in on July --10:58:1813 MS. AGENA: July 1st. 10:58:1814 THE COURT: -- on July the 1st. So a little bit over a half a month after, and she said this June 11th response 15 consisted of, even by your representation, over 130,000 16 17 documents. Which suggests that for you to determine that you needed to test whether or not it had been fully complied with, 18 19 that in between June the 11th and July the 1st, you had undertaken to review the 130,000 documents -- 130,000-plus 20 documents and reached a determination that things were missing 21 and, i.e., the production was not complete. 22 So those were the two things that stuck out in her 10:59:1023

representations and argument to me. With those -- with that

being said, I'll allow you to respond.

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MR. MASSEY: Thank you, Your Honor. The first thing, 10:59:21 1 2 Your Honor, is that until today, I had never heard Wipro say, We 3 fully complied. So that's news to us. And I appreciate counsel saying that, but all of us have represented large, multinational 4 entities with multiple locations, and we understand that our --5 we make requests of our client. Our client takes those 6 7 requests -- and we have in-house counsel. In-house counsel takes those requests. In-house counsel goes and talks to people 8 on the ground. 9 And so the -- the issue is whether there's full 10:59:5210 compliance not from these lawyers, but from their client. And 11 12 so I don't want anyone to leave the impression that we're saying 13 these lawyers have done anything wrong with respect to the 14 production in this case. 11:00:0915 THE COURT: I didn't take it as that. 11:00:1116 MR. MASSEY: Okay. I want to make sure the record is 17 clear. THE COURT: I didn't take it as that. 11:00:1318 11:00:1419 MR. MASSEY: But I do believe, Your Honor, that -that, you know, we've had our clients -- even when it comes to 20 our client, it's good to trust but verify when it comes to 21 22 something like this. And so with respect to counsel's representations to 11:00:2323 24 the Court, I appreciate that. But with respect to the document review, that window, I can tell you I didn't go through 130,000 25

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pages of documents, but it's my understanding that my co-counsel did.

I looked at a few things. I looked and I saw that — that pages of reports were so heavily redacted, we couldn't tell the name of the individual, where they worked, and there were things like that. So there were pages of documents that were produced, but the utility of those pages was zero because the — the responsive information, which defense thought was nonresponsive, is the kind of information we need to pull together to create the data that we needed to test and make our case.

So I will let Mr. von Klemperer talk as to that window, that June 11 to July 1st window, but I would just like to put a comma there and talk about the breadth of the 30(b)(6) notice we proposed. And -- and could it have been more artfully worded? I mean, obviously. There was a typo as to New Brunswick.

But the point of it is when we got to that point, when we got -- before that was issued, it was to try to get some resolution on getting compliance with this Court's April 12th order. Counsel has talked much about meet and confer. Well, we've done that before we got here on April 12th, and April 12th, there was an order.

Counsel's referred to it as the Court's instructions.

They weren't instructions. They were orders. They were orders

1 for Wipro to produce certain categories of documents from a 2 certain period of time from a certain location and other locations that could be accessed from that location. It's our 3 position, to this day, that that has not been done, and we're 4 not saying counsel didn't do it. We're saying their client 5 didn't do it. 6 THE COURT: What basis do you have to suggest that it 11:02:20 7 has not been done? 8 MR. MASSEY: Well, when we look at what we do have --11:02:24 9 we have a sampling of what we do have, and based on other cases 10 11 of what we should expect. 11:02:3212 For example, the -- the staffing data on the document 13 we provided, well, race is missing from 50 percent of those 14 records. 11:02:4215 THE COURT: Counsel made the point that that was a 16 voluntary response and that it was not a mandatory item that 17 would be present. So maybe that explains why it's missing. 11:02:5418 MR. MASSEY: Okay. Well, that -- I mean, that's not 19 the only deficiency we see. Now, maybe -- maybe some of the deficiencies cannot be cured, cannot be corrected and data 20 doesn't exist --21 THE COURT: Counsel, have a seat. 11:03:0322 MR. MASSEY: But, you know, the no company-wide 11:03:0523 24 affirmative action plans, I mean, why -- why wouldn't they have

company-wide -- what about the business plans -- the

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company-wide business plans? Even when -- counsel referred to their privilege log. Well, the privilege log does have communication between counsel -- outside counsel and in-house counsel, but then the back of it has references to communication with the EEOC. How are those privileged?

At this Court's hearing on April 12th, you left open the possibility of documents being produced *in camera* concerning investigations, and what counsel's done is talked about not limited to employment investigations, but not visa investigations, and we believe all that's on the table. All that's part of the Court's order of April 12th, 2019.

So I'd like to have Mr. von Klemperer talk about what was done with respect to reviewing the production from June 11th two July 1st before the 30(b)(6) was generated, Your Honor.

THE COURT: Hold on just a moment.

And maybe I'm misunderstanding you, Mr. Massey, and I'm going to try to get a better understanding.

MR. MASSEY: Sure.

THE COURT: In regards to the 30- -- what you've called the 30(b)(6) of July the 1st, you stood up, in your initial remarks to the Court, and stated that -- the phrase you used, good for the goose, good for the gander, it wasn't discovery about discovery. It was a request to confirm that the production ordered by this Court on April the 12th had been fully done. Did I understand that correctly?

MR. MASSEY: That's correct, Your Honor. 11:05:01 1 11:05:02 THE COURT: Okay. So, obviously, the -- if what counsel handed up to me, the 30(b)(6) document talked --3 deposition topics, that's a little bit different from -- I don't 4 have the transcript from the April 12th hearing memorized, but 5 what you handed up to me, the very first thing where I am 6 7 speaking, and I'm speaking my orders, these are quite different. So it seems to me that, if the intent of the 30(b)(6) 11:05:42 8 deposition notice was to confirm compliance with my orders, that 9 the topics would have tracked the language from my speaking 10 order as opposed to what appears to be a more broad deposition 11 12 request, slash, interrogatory. MR. MASSEY: Your Honor, I -- I agree --11:06:0713 11:06:0814 THE COURT: Okay. MR. MASSEY: -- and what I would do with topic one is 11:06:0815 put comma, rather period, pursuant to the Court's order of 16 April 12th, 2019. And -- and, really, the topic, the -- the 17 crux of the driver of this proposed deposition is topic two 18 where it says: (Reading) Identify and describe all efforts by 19 Wipro to search for, collect and produce documents and ESI 20 responsive to plaintiffs' discovery requests pursuant to the 21 Court's instructions -- and I would change it -- April 12th, 22 2019, order. 23

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THE COURT: The other point that counsel makes along -- I think that's helps clarify the issue.

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The other point that counsel makes is that in -- and, Counsel, please correct me if I'm overstating what you said.

But that counsel said that in complying with my orders of April the 12th, there were multiple people involved, and it would be extremely difficult to seat one person who would be able to respond to each and every effort that was undertaken to comply with my April the 12th order.

So if that is correct, and I have no reason to believe that it -- that it isn't, you're not talking about a single person taking a seat for a deposition. You're talking about multiple people. And even just from the face of it, there were multiple locations, there were multiple topics, perhaps requiring the involvement of different departments at the defendant. So that makes perfect sense to me.

So how do you rectify putting a single person in a

MR. MASSEY: Well, Your Honor, we didn't suggest that it's necessarily one person, but we do think it's a manageable number. Just as the equivalent in state court Rule 199 when you're deposing the designated representative of an organization, that can be multiple people to speak on topics. What we tried to do is put as few topics as possible.

There are only four and, really, the main topic is two. And so we're trying to narrow the topic: What was done?

THE COURT: Okay. This is what we're going to do -- a

Case 3:20-cv-03414-FLW-LHG Document 15-5 Filed 07/08/20 Page 33 of 52 PageID: 389 closing thought? 1 MR. MASSEY: From counsel, we also need to know what 11:08:41 else exists. 3 THE COURT: This is what we're going to do: You're 11:08:46 going -- you're hereby ordered, in the next two weeks, to meet 5 and confer in person, with coffee and donuts or bagels, whatever 6 7 you like, because you're going to be there a while, and you're going to go through my April the 12th order. 8 Mr. Massey, for each of my orders that I ordered on 11:09:10 9 10 April the 12th, you're going to come, in hand, with specific 11 deficits, something that you can point out was not produced that should have been produced, what you were expecting to be 12 13 produced --11:09:3214 MR. MASSEY: Yes, Your Honor. THE COURT: -- and was not produced. 11:09:3215 11:09:3616 Once you have that list in hand, Counsel, if you're 17 able to respond immediately, do so at the coffee meet-and-greet. If you're not able to immediately respond because you have to 18 touch base with someone, you'll have three business days after 19 the meet-and-greet to respond in writing. Understood? 20 MS. AGENA: Yes, Your Honor. 11:10:0221 11:10:0222 THE COURT: Mr. Massey, understood?

MR. MASSEY: Understood, Your Honor.

THE COURT: Okay. The second thing that we're going

to do at this -- well, it's not necessarily for you, Mr. Massey,

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but, counsel, looking at No. 2 of your handout to me: (Reading)

Identify and describe all efforts taken by Wipro to search for,

collect and produce documents and ESI responsive to plaintiffs'

discovery request pursuant to the Court's orders at the April

12th hearing.

You mentioned that you would be -- you've already made a representation to me as an officer of the Court, which I take at face value. You also mentioned that you would be willing to have a verified response. So I want you to talk to whom you need to talk to, to produce a verification, if it's from one person or more, that explains exactly the response to item No. 2.

Based upon that verification or affidavit, the Court will make a determination as to whether or not a deposition should take place in regards to the follow-up for that affidavit.

So the more detailed that the affidavit or verification is, the less likely there may be the need for a -- a deposition.

But that will put in counsel's hand at least a description of what was done. That gives you, also, the opportunity to monitor the response for any attorney-client privilege or attorney work product.

Counsel, once you have that in hand, if you take issue with it, send it up to me. I'll take a look at it, and I'll

issues with it, I'll take that up. Because it may very well be

THE COURT: That's fine. So three weeks from today,

you can pick an office, but it's going to be in person across a

conference table. And again, Mr. Massey, the plaintiffs' team,

they're going to walk into that meet-and-greet with a specific

list of what has been deficient in your response.

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MS. AGENA: Allegedly been deficient. 11:14:42 1 11:14:44 THE COURT: Allegedly been deficient. So -- very well. 3 He's going to hand that to you, and if you can 11:14:46 respond -- walk through the list while you're sitting at the 5 If you're able to offer an immediate response, you will 6 7 offer an immediate response. If it turns out that you need to go and talk with someone, confer with someone, you'll have three 8 business days after that to actually provide a written response 9 10 to Mr. Massey. 11:15:0911 Then Mr. Massey will know -- first of all, you will 12 know what Mr. Massey and the plaintiffs' team has deemed deficient. You will have a response to Mr. Massey either 13 14 immediately or third -- within three business days. 11:15:3015 MS. AGENA: Your Honor, if I may make a suggestion, it 16 might be a more productive conference if we could actually get the list three days before we have the conference, and then we 17 would be in a position to actually discuss it there. 18 11:15:4319 THE COURT: Absolutely. If -- do you have any objection to that, Mr. Massey? 20 MR. MASSEY: I don't, Your Honor. 11:15:4621 11:15:4722 THE COURT: Okay. So if -- let's just use what we have. Let's say the meeting takes place on a Friday. Then 23 he'll give it to you by noon on Wednesday. 24 MS. AGENA: Thank you, Your Honor. 11:16:0025

THE COURT: Okay. So you'll know what's going on. 11:16:00 1 11:16:02 Then based upon that, meet and confer, and your verifications, affidavits or whatever -- Mr. Massey will be in a 3 position to make another argument or, more importantly, I will 4 be in the position to say, I'm satisfied, based upon counsel's 5 response to what you claim to be deficient and these 6 7 verifications, that my order has been complied with, and then we can move on to the next phase. 8 So I'm not sure how I'm going to come out on that. 11:16:35 may be that Mr. Massey's satisfied, and that ends it. It may be 10 that Mr. Massey's not satisfied. I'll take a look at it, and 11 12 then I'm satisfied, and I'll tell you that I'm satisfied, and we'll move on to the next phase. Or, if there are deficiencies 13 14 that I think still exist, I'll tell you what those are, and I'll 15 make appropriate orders thereafter. I think that that's 16 probably the best way to -- to deal with it. 11:17:0417 (Sotto voce discussion between the Court and case manager.) 11:17:16 18 THE COURT: All right. 11:17:1719 MS. AGENA: Your Honor, we also currently, I think, have on the docket a hearing for next Friday, which was actually 20 the -- August 23rd. It was actually set at the April 12th 21 hearing as a follow-up. I assume this --22 11:17:3123 THE COURT: Yes. This takes care. 11:17:3224 MS. AGENA: -- takes the place of that, but we do

still have the issue of a scheduling order has not been entered

ago actually mirrors the Court's draft proposed scheduling order

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that you-all handed to us on April 12th at the hearing that, ultimately, was abandoned during the course of that day and put off.

It mirrors that draft scheduling order except for one initial phase that we have added to occur this year before the end of the year, and I would best describe that phase as a summary judgment phase. And the reason we're asking for this, Your Honor, stems back to the original Rule 26 proportionality argument we made back in April when we first took a run at you on this phased discovery process.

 $\label{eq:solution} \text{So I want to expand on that just a little bit,} \\ \text{Your Honor.}$

So what happened in that April 12th hearing, as the Court remembers, is the Court ordered us to produce this range of discovery that we've been discussing this morning. We did that. It took us 60 days to do it and several hundred thousand dollars to accomplish this task. It was a monumental task, Your Honor, and, frankly, was not something we were hoping for coming out of that April hearing, but it was what we have, and we did it.

The argument we made back in April was, Your Honor, the claims of the individual named plaintiffs in this case are so weak, that to require us to undertake this burden at this time is out of proportion according to Rule 26, so let us focus on the plaintiffs first.

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You put that aside in April, but I want to discuss it again today in the context of this proposed order because what has happened since that April hearing is we are -- we're on the hook for several hundred thousand dollars of this discovery that was exceedingly broad. They now have that. And we're going to have this meeting in three weeks to discuss what they have, but they have a lot now.

They have enough to give to their expert; enough to do their analysis. Now, they may need more at some point, and that's fine, but the other thing that has happened since April is we took the two individual plaintiffs' depositions and confirmed what we suggested in April, which is that there is —these are summary judgment claims, Your Honor.

There is no legitimate evidence to support their individual claims, and so what we would like to do is get motions for summary judgment on file by December -- or, sorry, by January, you know, and the -- if -- if we do that, and if we're right, that could potentially end this case, which is good for the Court. It's good for us. It's not good for the plaintiffs, but it -- it is -- if it's -- if that's on the merits, if that's what needs to happen, that's fine. But we're on the hook for hundreds of thousands of additional dollars if we don't.

Now, you may ask, Judge, why not just file a motion for summary judgment now.

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THE COURT: Yes.

MR. SPALDING: Okay. The reason we built in this extra five-month period -- I think in our order we've got a proposed discovery deadline for that initial phase in December, and then the -- the date in January to file the motions. The only reason we did that, Judge, is because we assumed that if we were to file the motions for summary judgment on September 15th, for example, that the plaintiffs would stand up and say, Your Honor, we need to do discovery to defeat these motions. And then we've got those motions sitting there while they do four months of discovery with those motions as a target. So we just built in this phase to conduct this discovery.

We are -- we've taken the depositions of the plaintiffs. We're perfectly happy to make available depositions on the merits of the people they need to depose to try to defeat summary judgment, but we think it's appropriate, under Rule 26, for us to get this done by December and January before we, again, pick up this massive, broad discovery that would be necessary if the plaintiffs had good claims.

So that's where we're -- that's what our thought process is on this, Judge.

THE COURT: I appreciate that.

MR. MASSEY: Your Honor, I'll briefly respond, and
I'll turn it over to Mr. von Klemperer. But I'll remind the
Court what the Court said, and the Court was very prophetic in

1 what it said on April 12th. It says: (Reading) Because, no, I would look very unkindly on a party saying --2 11:22:52 THE REPORTER: I'm sorry. I'm sorry. Can you repeat 3 that? 4 MR. MASSEY: Sure. 11:22:52 THE COURT: Pull your mic closer to you, Mr. Massey. 11:22:55 11:22:57 MR. MASSEY: Your Honor, I'll remind you what you 7 It was very prophetic on April 12th, 2019. You said: 8 9 (Reading) Because, no, I would look very unkindly on a party standing in front of me making argument about limiting 10 discovery, and then showing up for class certification argument 11 12 making an argument about what plaintiff does not have by way of discovery to prove its case. 13 So what the defendants are now doing in the hearing 11:23:2014 15 that we've consumed a great deal of time talking about what we perceive are deficiencies in their production, are saying that 16 17 the plaintiffs -- that they produced enough that they want to -to limit discovery and move for summary judgment. 18 THE COURT: No. I didn't -- I didn't hear that. I 11:23:3919 heard the opposite, actually, which I was surprised by. I heard 20 counsel say that, first thing we're going to do, is tie off this 21 issue of what I did by April 12th, my order. We're going to get 22 that out of the way. Counsel then said that he built in this 23

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period for whatever merit-based discovery that plaintiffs would

need to address any potential motion for summary judgment.

through the end of the year, and so if the two of you cannot

So in counsel's remarks to me, he anticipates that 11:24:15 1 you're going to need certain discovery to potentially defeat a 2 3 motion for summary judgment, and that they were willing, by way of deposition, whatever the case may be, to allow time for that. 4 If I -- did I understand you correctly? 5 MR. SPALDING: That's correctly right, Your Honor. 11:24:38 11:24:40 THE COURT: Okay. So he -- I didn't here limited 7 discovery. I heard merit-based discovery, and I was surprised 8 to hear it from him, but that's what he said. 9 MR. MASSEY: Well, Your Honor, I'll cede to 11:24:4810 Mr. von Klemperer in just a second, but what I understand -- or 11 12 what I understood is that, you know, the -- the defendants want to give us time to conduct discovery, including deposition 13 14 discovery. The problem with that is we've got to get this 15 written discovery, we've got to get that under control --11:25:0616 THE COURT: No, first things first. And so what I 17 anticipate is you're going to tie off -- we're going to finish this issue of any alleged deficiencies with the April 12th 18 order. That will be done. Then, at that point in time, I would 19 anticipate you now know that they consider this a summary 20 judgment case. Whatever discovery that you would potentially 21 need to put in a response to such a motion, I will give you 22 permission to move forward with. 23 11:25:4324 I'm going to try to keep close hands on this case

agree as to a deposition or whatever other discovery you deem
that you need, come see me. I'll listen and, based upon what
their potential argument is against this, knowing that I'm going
to have a motion for summary judgment coming down the pike, I -I'm going to allow you to do that.

So I can tell you -- and I've told everyone this from
the day that I've took a bench. I look -- I have no problem

the day that I've took a bench. I look -- I have no problem closing the courthouse door on a claim, but I do not look kindly on doing that until such time the other side has had their opportunity to fully vet and discover their claims such that they can respond to that request.

And so I'm not going to put you in a position of responding to a motion -- a dispositive motion without giving you the time to conduct the necessary discovery for the response to that motion.

MR. MASSEY: I appreciate that, Your Honor. And
Mr. von Klemperer had something to say specifically about the
order.

THE COURT: All right.

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MR. VON KLEMPERER: Your Honor, you may recall that the defendants filed a motion for what they called "phased discovery" --

THE COURT: Yeah.

MR. VON KLEMPERER: -- and we responded to that. Our response is Document 68. We spent about 20 pages briefing why

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what they're proposing is foreclosed by Supreme Court and Fifth Circuit precedent.

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They wanted to limit discovery to just the individual -- the claims of the individual named plaintiffs and leave the pattern or practice discussion to later in the case.

The Fifth Circuit has held very clearly that you cannot do that. You must focus on the class liability first before you move to the individual plaintiffs.

And the reason for that is that this is a Teamsters case which looks, first, to whether there's a pattern or practice of discrimination. And if the plaintiffs can prove that first phase, then there's a second subsequent phase where each individual class member and named plaintiff is entitled to a presumption of — that they were discriminated against, and so the burden is actually on the defendant to disprove that.

And so we address that point very extensively in our opposition to their motion, which is Docket 68. We responded again a couple of days ago to their recent filing. That is Docket 87. And I would just urge the Court to review that case law. It's Footnote 2 of our recent filing, 87. Their proposal is not permitted.

THE COURT: I appreciate that, and I think you're getting a little bit ahead of yourself because I'm not prepared to order any phased discovery at this point.

MR. VON KLEMPERER: Okay.

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THE COURT: Again, this is my kind of game plan moving forward: First things first. Let's finish the issue of any alleged deficiencies with the April 12th order. You're going to take care of that within the next three and a half, four weeks.

Once that is done -- well, it may not be four weeks because after you meet and confer, if you deem that there are some deficiencies still, and you need to bring that to my attention, I'll look at the alleged -- not alleged. I'll look at the verifications, the affidavits as to what has been done, and then I can make a determination.

First, we've completed what I've ordered from April the 12th. Let's move to the next phase. That next phase is going to be, I would assume -- counsel has indicated there's going to be a motion for summary judgment. I'm going to allow any discovery that will put you in a position -- I do know that.

As to discovery regarding class certification, that coming -- that's a discussion that we're going to have a little bit further down the road, and I'm not precluding it or even ruling on that right now or ordering it one way or the other. I anticipate we're going to be meeting probably in early October, at the latest, to see what our next steps are. Maybe we'll -- we -- before the end of September, but I -- it'll probably be early October, to make sure all of the items that I've ordered from April the 12th have been done, and then we'll move to the next phase.

At that hearing or our next gathering, we can talk 11:30:29 1 2 about this very argument that you're making. The one thing I do 3 want to do, though, by way of -- I would like to say that we're going to get this case tried in early 2021, and so that's going 4 to -- if we get that far. That's going to kind of be how we're 5 moving. 6 So as I consider discovery that is necessary, it will 11:30:57 7 be with that in -- that potential trial date in mind sometime in 8 early 2021. 9 MR. VON KLEMPERER: Thank you, Your Honor. 11:31:110 THE COURT: Does that make sense to you? 11:31:1211 MR. VON KLEMPERER: It does. And we would just ask 11:31:13 12 that the Court defer entering the scheduling order --13 11:31:1814 THE COURT: I'm not going to enter it now. 11:31:2015 MR. VON KLEMPERER: Okay. 11:31:2016 THE COURT: Yeah, because it has this phased discovery 17 issue. One of the things that I want to, again, tie off is this April the 12th order from the Court. We're going to have 18 another, again, hearing by the end of September/early October, 19 and I think it would be more appropriate then because if I find 20 that you hadn't -- if I find that you hadn't complied, and I 21 order additional steps to be taken, then that will throw off 22 what, potentially, you've suggested here. 23 MR. SPALDING: And as I -- as you consider this phased 11:31:5424

discovery issue, Judge, I just want to point out

Mr. von Klemperer is citing cases that all predate the 2015

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2 amendments to the Federal Rules of Civil Procedure, most specifically Rule 26. And Rule 26D specifically gives the Court 3 the ability to enter phased -- a phased discovery order in cases 4 like this, all related to the proportionality of -- of discovery 5 in the case. 6 THE COURT: We're going to -- I know for the next few 11:32:21 7 months I'm going to keep tight reins on you because I want to, 8 again, make sure that this April portion is fully complied with. 9 As you've brought it to my attention, I want to make sure any 10 alleged deficiencies are remedied before we move on. 11 And so, Ms. Edwards --11:32:4012 11:32:4513 THE CASE MANAGER: Yes, sir? 11:32:4514 THE COURT: -- do you have a potential date? Let's 15 see. Let me -- I'll -- that will probably be most helpful. Let 16 me give you a date. 11:33:1017 (Sotto voce discussion between the Court and law clerk.) 11:33:1218 THE COURT: So let's see. October 6th will be your meet-and-confer. That would be the 11th for any follow-up. 19 MS. AGENA: I'm sorry. October, Your Honor? 11:33:3020 11:33:3221 THE COURT: No, no. September. If -- if your meet -oh, let me go back here. Today's the 16th. Three weeks from 22 today is September the 6th. I gave you three business days 23 after that to file something in writing, if necessary. That's 24 September the 11th. 25

So Mr. Massey and co-counsel would need some time to 11:33:53 1 2 digest that, perhaps respond. Ms. Edwards, what do we look like on October the 3rd 11:34:11 3 or 4th? 4 (Sotto voce discussion between the Court and case manager.) 11:34:23 5 THE COURT: Okay. October the 4th, 10:30 a.m., that's 11:34:26 7 your next scheduled hearing. So if this issue about April -- my orders from April the 12th have not been tied off, we'll take 8 9 that up at that time. And, also, we can address the issue of 10 the next phase of discovery and/or the scheduling order at 11 that -- at that hearing. MR. MASSEY: Perfect, Your Honor. One question. 11:34:5612 11:34:5713 THE COURT: Uh-huh. 11:34:5814 MR. MASSEY: Do we have a deadline for the detailed 15 affidavit from Wipro regarding its complaint? 11:35:0416 THE COURT: Yes. Counsel, when do you think -- how 17 much time do you think you need on that? 11:35:1918 MS. AGENA: We can certainly, I think, do that by September 11th. 19 11:35:2320 THE COURT: Perfect. MS. AGENA: Same time as the response. It's going to 11:35:2421 be just a little tricky because we're dealing with people in 22 other time zones. 23 THE COURT: That's fine. And then that gives 11:35:2924 25 Mr. Massey one, two -- three weeks prior to the hearing to meet

1 and confer with you about those affidavits and/or formulate a 2 argument to the Court about any alleged deficiencies in that, as well, and give you an opportunity to respond. 3 So to the extent that either party has any contentions 11:35:52 remaining from the April the 12th orders that will -- that we 5 will discuss at the October the 4th hearing, those need to be on 6 file, your briefing, no later than September the 30th, close of 7 business. So that's approximately a week beforehand, and the 8 Court will have the opportunity to prepare by reading and 9 getting prepared for that. 10 MR. SPALDING: One more comment, Your Honor. 11:36:2911 12 defendants have on file a motion for judgment on the pleadings. Since we have now built in a date to file our comprehensive 13 14 motions for summary judgment in this case, I think maybe the 15 best thing to do is for the Court to ignore that motion for the 16 time being, and we'll incorporate it into our -- our motions for 17 summary judgment when we file those in December. 11:36:5718 MS. AGENA: January. January. My apologies. 11:36:5819 MR. SPALDING: THE COURT: By "incorporate," you mean file a response 11:37:1120 to? 21 MR. SPALDING: No, no. We have -- we filed it back in 11:37:1622 It's sitting there. 23 March. THE COURT: Oh, I --11:37:1924

MR. SPALDING: We can -- I'm suggesting it may be

11:37:2025

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